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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of

Hideaki KATO, et al.



Serial No.: 10/753,870

Group Art Unit: 2879

Filed: January 9, 2004

Examiner: Not Yet Assigned

For: LIGHT EMITTING DEVICE

Honorable Commissioner of Patents
Alexandria, Virginia 22313-1450

**REQUEST FOR WITHDRAWAL OF HOLDING OF ABANDONMENT AND
REQUEST FOR ACCEPTANCE OF DELAYED PAYMENT OF
FILING AND LATE PAYMENT SURCHARGE FEES AND
SUBMISSION OF DECLARATION
UNDER 37 C.F.R. § 1.37(b) AND MPEP § 601.01(f)**

Sir:

In accordance with Delgar, Inc., v. Schuyler (172 USPQ 513) (DDC 1971), 37 C.F.R. § 1.37(b) and MPEP § 601.01(f), Applicants hereby request the withdrawal of the holding of abandonment and request acceptance of the delayed payment of filing and late payment surcharge fees due to unintentional failure to pay.

On March 11, 2005, Applicants filed a Submission of Declaration which included a check in the sum of \$3,730 for payment of the filing and late payment surcharge fees. Applicants also filed a Petition to Revive Abandoned Application and Declaration of Mary C. Gibb (copies attached with date-stamped post card receipt), which are herein incorporated by reference.

Applicants have been informed by Ms. Patricia Bowles, an attorney at the Petitions Branch, that the Applicants' Petition filed on March 11, 2005, should be correctly renamed as a "Request for Withdrawal of Holding of Abandonment". Applicants had been informed by the Petitions Branch and the Office of Initial Examination that this name change from a

"Petition to Revive" to a "Request for Withdrawal" could be accomplished by the Office of Initial Examination without the filing of additional documents and that this file would be directed to an Examiner for review. Applicants have now been informed by the Office of Initial Examination that they cannot accomplish this.


As stated previously by Applicants, since the Notice to File Missing Parts of Nonprovisional Application was not received and the file jacket and docket records of the address of record were searched, the entire delay in filing the required reply from the due date for the reply until the filing of a grantable request pursuant to 37 § C.F.R. 1.37(b) was unintentional.

Pursuant to the previously noted filing of Requests for NOMP, detailed description of docket record, and searches of the file jacket and docket record for the address of record provided in the Declaration of Ms. Gibb, which are believed to satisfy fully the requirements set forth in MPEP § 711.03(c) and 1156 O.G. 53, Applicants respectfully request the withdrawal of the holding of abandonment and acceptance of the delayed payment of filing and late payment surcharge fees due as though no lapse had ever occurred.

Since this error is due to the U.S. Patent and Trademark Office, no fee is believed necessary. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 50-0481.

Date: 7/7/05
McGinn & Gibb, PLLC
Intellectual Property Law
8321 Old Courthouse Rd., Suite 200
Vienna, Virginia 22182-3817
(703) 761-4100
Customer No. 21254

Respectfully submitted,


Sean M. McGinn, Esq.
Registration No. 34,386

HIR.086


Attorney's Post Card Filing Receipt

Serial Number: 10,753,870

Papers Filed On: 03/11/03

Attorney's Docket Number: PTGF-03104


☐ Patent

 Trademark

Applicant's Name: KATO, et al.

Application Filing Date: 01/09/04

Papers Filed Herewith:


 Amendment

☐ Request for Extension of Time

CPA Request

☐ Notice of Appeal

☐ Appeal Brief (in triplicate)

 Reply Brief

IDS

MAR 11 2005

1449 Form w/ ___ Documents

☐ Priority Document(s)


 Assignment

Recordation Cover Sheet

Formal Drawings

☐ Drawing Corrections

☐ Issue Fee Transmittal

 Missing Parts

☒ Other (2) DECLARATION OF MARYC. GIBB (3) SUBMISSION OF DECLARATION

Fees Filed Herewith: \$ 3730 ☒ Check ☐ Charge Deposit Account:

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RECORD OF PAYMENT OR
EMPLOYEE PAY STATEMENT

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2/24/05	Commissioner USPTO					None	12526	\$ 3930

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~~NOTE:~~

~~NON-NEGOTIABLE~~



HIR 086

Attorney's Post Card Filing Receipt

SMY/abr

Serial Number: 101753,870Papers Filed On: 03/11/05Attorney's Docket Number: PTGF-03104☒ Patent☐ TrademarkApplicant's Name: KATO, et al.
Papers Filed Herewith:Application Filing Date: 01/09/04

- ☐ Amendment ☐ Request for Extension of Time ☐ CPA Request
☐ Notice of Appeal ☐ Appeal Brief (in triplicate) ☐ Reply Brief
☐ IDS ☐ 1449 Form w/ ___ Documents ☐ Priority Document(s)
☐ Assignment ☐ Recordation Cover Sheet ☐ Formal Drawings
☐ Drawing Corrections ☐ Issue Fee Transmittal ☒ Missing Parts
☒ Other (1) PETITION TO REVIVE (2) DECLARATION OF MARY C. GIBB (3) SUBMISSION OF DECLARATION

Fees Filed Herewith: \$ 3730 ☒ Check ☐ Charge Deposit Account: _____

12526

Hand Delivered

RECORD OF PAYMENT OR
EMPLOYEE PAY STATEMENTTO THE ORDER OF
Commissioner USPTO

DATE	GROSS	INCOME TAX	SOCIAL SECURITY	MED. CARE	NET AMOUNT
2/24/05					\$ 3730

PAY PREVIOUSLY

NON-NEGOTIABLE



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re patent application of

Hideaki KATO, et al.

Serial No.: 10/753,870

Group Art Unit: 2879

Filed: January 9, 204

Examiner: Not Yet Assigned

For: LIGHT EMITTING DEVICE

Honorable Commissioner of Patents
Alexandria, Virginia 22313-1450

**PETITION TO REVIVE ABANDONED APPLICATION DUE TO
UNINTENTIONAL DELAY AND
FOR ACCEPTANCE OF DELAYED PAYMENT OF
FILING AND LATE PAYMENT SURCHARGE FEES AND
SUBMISSION OF DECLARATION
UNDER 37 C.F.R. § 1.37(b) AND MPEP § 601.01(f)**

Sir:

Applicants concurrently file herewith a Submission of Declaration which includes payment of the filing and late payment surcharge fees.

In accordance with Delgar, Inc., v. Schuyler (172 USPQ 513) (DDC 1971), 37 C.F.R. § 1.37(b) and MPEP § 601.01(f), Applicants hereby petition the Director to revive this abandoned application and accept delayed payment of filing and late payment surcharge fees due to unintentional failure to pay.

Applicants state that the Notice to File Missing Parts of Nonprovisional Application was not received, that the file jacket and docket records of the address of record were searched (a copy of the docket records are attached as Exhibits A-B to the Declaration of Mary C. Gibb, and are incorporated herein by reference), and that the entire delay in filing the

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Docket No.: PTGF-03104
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required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 § C.F.R. 1.37(b) was unintentional.

Since Applicants had not received any communication from the USPTO, Applicants filed a Request for Notice to File Missing Parts of Nonprovisional Application and Official Filing Receipt on July 26, 2004 (Exhibit 2, with date-stamped post card receipt), a Second Request for Notice to File Missing Parts of Nonprovisional Application and Official Filing Receipt on September 24, 2004 (Exhibit 3, with date-stamped post card receipt), and a Third Request for Notice to File Missing Parts of Nonprovisional Application and Official Filing Receipt on November 5, 2004 (Exhibit 4, with date-stamped post card receipt).

Again, the first communication received by the Applicants from the USPTO on the above application was the Notice of Abandonment dated January 12, 2005 (Exhibit 1).

Applicants have never received the Notice to File Missing Parts of Nonprovisional Application (hereafter "NOMP") allegedly mailed April 22, 2004.

It is noted that different mailing dates are listed on the Notice of Abandonment and in the file history on our recently-activated private PAIR account. PAIR shows a mailing date of April 22, 2004 (Exhibit 5), while the actual NOMP which was mailed, as viewed from the file wrapper, shows a mailing date of April 21, 2004 (Exhibit 6).

It is further noted that our recently-activated private PAIR account confirms in the USPTO image file wrapper for this application that our first Request dated July 26, 2004, and our Third Request dated November 5, 2004, were received (Exhibit 7). The Second Request dated September 24, 2004, is not listed.

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Accompanying this Petition is the Declaration of Mary C. Gibb, Manager of the Docketing Department for the address of record in the undersigned's law firm. As set forth in that Declaration, Ms. Gibb, in her capacity as Manager of the Docketing Department, is intimately familiar with all of the details regarding the processing of mail received in the Docketing Department, including correspondence received from the USPTO.

Attached to the Declaration is supporting documentation (Exhibits A and B) showing that no NOMP in the subject application was processed by the Docketing Department or received by the undersigned's law firm. In addition, the file jacket and docket records for the address of record have been searched for an NOMP in the subject application without success.

Exhibits A and B are copies of the docket record of the address of record showing all actions due by the firm of McGinn & Gibb, PLLC, at and around the alleged due date and final due date (two and six months after mailing of NOMP) -- June 21 and October 21, 2004 (according to the mailed NOMP in the PAIR file wrapper), and June 22 and October 22, 2004 (according to the Notice of Abandonment and PAIR file history). This evidence is acceptable proof of non-receipt as provided by 1156 O.G. 53.

The undersigned has been associated with McGinn & Gibb, PLLC, for a number of years, and in that time has been able to rely on the performance of the Docketing Department to provide conscientious, reliable, and competent notice of due dates for responses to correspondence received from the USPTO. Based on the undersigned's familiarity with the good work performed by the employees of the Docketing Department, it is respectfully

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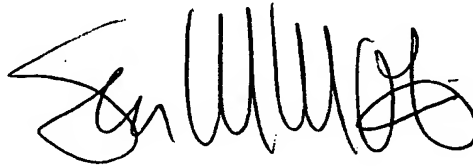
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submitted that the only reasonable conclusion is that no NOMP was ever received by the undersigned's law firm for the above-identified application.

Pursuant to the above-noted filing of Requests for NOMP, detailed description of docket record, and searches of the file jacket and docket record for the address of record provided in the Declaration of Ms. Gibb, which are believed to satisfy fully the requirements set forth in MPEP § 711.03(c) and 1156 O.G. 53, Applicants respectfully request that the Director accept delayed payment of filing and late payment surcharge fees due to unintentional failure to pay as though no lapse had ever occurred.

Since this error is due to the U.S. Patent and Trademark Office, no fee is believed necessary. Please charge any deficiencies in fees and credit any overpayment of fees to Attorney's Deposit Account No. 50-0481.

Respectfully submitted,



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